

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MARITEL, INC.

and

MOBEX NETWORK SERVICES, LLC

Petitions for Rule Making to Amend the
Commission's Rules to Provide Additional
Flexibility for AMTS and VHF Public Coast
Station Licenses

WT Docket No. 04-257

RM-10743

MEMORANDUM OPINION AND ORDER

Adopted: January 6, 2010

Released: January 7, 2010

By the Commission:

I. INTRODUCTION AND EXECUTIVE SUMMARY

1. This *Memorandum Opinion and Order* addresses two petitions for reconsideration, filed respectively by AMTS Consortium LLC,¹ Telesaurus VPC, LLC, Intelligent Transportation & Monitoring Wireless LLC, and Warren Havens (collectively Havens²)³ and by Northeast Utilities Service Company (NUSCO),⁴ of the *Report and Order* in this proceeding. The *Report and Order* provided VHF Public Coast (VPC) and Automated Maritime Telecommunications System (AMTS) licensees additional

¹ We note that AMTS Consortium LLC subsequently changed its name to Environmental LLC. See, e.g., FCC File No. 0003649427 (filed Nov. 14, 2007).

² Joint comments were filed earlier in this proceeding by AMTS Consortium LLC, Telesaurus-VPC, LLC, Telesaurus Holdings GB, LLC, and Warren Havens. We will refer herein to both groups as "Havens."

³ Petition for Reconsideration by AMTS Consortium LLC, Telesaurus VPC, LLC, Intelligent Transportation & Monitoring Wireless LLC, and Warren Havens (filed July 6, 2007) (Havens Petition). Paging Systems, Inc. (PSI) filed an opposition to the Havens Petition on August 22, 2007. Opposition to Petition for Reconsideration (filed Aug. 22, 2007). Havens's reply was submitted on September 7, 2007. Reply to Opposition to Petition for Reconsideration (filed Sept. 7, 2007) (Havens Reply). We permit the late filing of the Havens Reply, which was due on September 6, 2007, because the Commission's Electronic Comment Filing System experienced technical difficulties on that date. See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, *Order*, MB Docket No. 05-255, 20 FCC Rcd 15676, 15676-77 ¶¶ 2-3 (MB 2005). We deny PSI's motion to strike the Havens Reply on the grounds that it contains statements that are irrelevant, beyond the scope of the opposition, or scandalous. See Motion to Dismiss or to Strike (filed Sept. 13, 2007). While we agree that much of the reply is not germane to whether the *Report and Order* should be reconsidered, our conclusions herein do not rely on those statements and we are capable of disregarding the extraneous matters. See Kentucky Central Television, Inc. (WKYT-TV), *Memorandum Opinion and Order*, 14 F.C.C. 2d 189, 191 (Rev. Bd. 1968).

⁴ Petition of Northeast Utilities Service Company for Clarification or Partial Reconsideration (filed June 13, 2007) (NUSCO Petition).

operational flexibility by permitting them to offer private correspondence service to units on land.⁵ As set forth below, we deny Havens's petition and grant NUSCO's petition in part.

II. BACKGROUND

2. The Maritime Services, which includes both VPC and AMTS services, provide for the unique distress, operational, and personal communications needs of vessels at sea and on inland waterways.⁶ As explained in the *Report and Order*, the rules governing these services permitted VPC and AMTS stations to provide either public or private correspondence service to maritime vessels, but only public correspondence service to units on land.⁷

3. The Commission released the *Notice of Proposed Rule Making* in this proceeding⁸ in response to petitions for rulemaking requesting amendment of the Commission's Rules to provide VPC and AMTS licensees with certain additional operational flexibility, primarily the ability to provide private correspondence service to units on land on a non-interconnected basis.⁹ The Commission proposed to revise the Part 80 rules to permit VPC and AMTS licensees to provide private land mobile radio (PLMR) services, but declined to propose other rule changes, including permitting VPC geographic licensees to choose whether to provide maritime public correspondence service, and elimination of various Part 80 regulatory obligations (particularly Part 80 equipment standards).¹⁰ The Commission was concerned that the requested revisions could undermine the core purpose of the Maritime Services and create a *de facto* reallocation or otherwise remove spectrum from the maritime community.¹¹

4. In the *Report and Order*, the Commission amended its rules to permit private correspondence service to units on land.¹² It also eliminated the interconnection requirement for AMTS stations providing private correspondence service.¹³ The Commission noted that demand to use the

⁵ See Maritel, Inc. and Mobex Network Services, LLC, *Report and Order*, WT Docket No. 04-257, 22 FCC Rcd 8971 (2007) (*Report and Order*).

⁶ VPC stations serve port and coastal areas using 156-162 MHz band frequencies that are allocated internationally for maritime service. The AMTS service, which operates in the 217/219 MHz bands, was established as an alternative to traditional VPC service, primarily to meet the specialized needs of tugs, barges, and other commercial vessels on inland waterways. For a fuller description of the Maritime Services, see Amendments of the Commission's Rules Concerning Maritime Communications, *Second Report and Order and Second Further Notice of Proposed Rule Making*, PR Docket 92-257, 12 FCC Rcd 16949, 16953-54 ¶¶ 4-6 (1997) (*Second Report and Order*).

⁷ See *Report and Order*, 22 FCC Rcd at 8973-75 ¶¶ 3-5. The flexibility to offer service to units on land extended to VPC geographic licensees, but not to site-based VPC licensees. See *id.* at 8974 n.18.

⁸ See MarITEL, Inc. and Mobex Network Services, LLC, *Notice of Proposed Rule Making*, WT Docket No. 04-257, 19 FCC Rcd 15225 (2005).

⁹ Petitions were filed by MarITEL, Inc., a VPC licensee, on May 16, 2003, and Mobex Network Services, LLC, an AMTS licensee, on June 13, 2003, respectively.

¹⁰ See *id.* at 15228-29 ¶¶ 7-9.

¹¹ See *id.* at 15230 ¶ 10.

¹² See *Report and Order*, 22 FCC Rcd at 8976-78 ¶¶ 8-10. See also 47 C.F.R. §§ 20.9, 80.123, 80.475(c).

¹³ See *Report and Order*, 22 FCC Rcd at 8978 ¶ 11. See also 47 C.F.R. §§ 80.5, 80.475(d).

allocated frequencies for maritime public correspondence had decreased, partly due to mariners' increased access to cellular, PCS, and satellite services, while demand for PLMR services, including public safety and traditional dispatch services, had increased.¹⁴ It further noted that many VPC and AMTS geographic licensees are authorized to provide service in areas remote from coasts or navigable waterways and should be allowed to put to use this excess capacity in order to promote spectrum efficiency.¹⁵

5. The Commission declined to remove certain regulatory requirements in order to, *inter alia*, permit VPC or AMTS licensees offering land mobile radio communications to operate in conformance with the Part 22 or Part 90 rules, rather than the Part 80 requirements.¹⁶ The Commission reaffirmed its commitment to ensure that VPC and AMTS services primarily benefit the maritime community, and explained that eliminating such a requirement would create a risk of a *de facto* reallocation of this spectrum from maritime to land mobile use.¹⁷

6. The Commission also denied Havens's request that it clarify that Section 80.123(d) of the Commission's Rules¹⁸ permits VPC and AMTS licensees that provide service to units on land to use base station equipment approved under Part 22 or Part 90.¹⁹ The Commission explained that the rule requires VPC and AMTS base station equipment to be certified under Part 80, and permits only land mobile units operating in conjunction with such base stations to be authorized under Parts 22 or 90.²⁰

7. In addition, the Commission rejected Havens's argument that the new operational flexibility for AMTS licensees to provide private correspondence service to units on land should be accorded only to AMTS geographic licensees, but not to site-based incumbent AMTS licensees.²¹ The Commission noted, however, that the rules did not previously differentiate between site-based and geographic AMTS licensees in terms of operational flexibility, and concluded that there was no basis for such divergent treatment.²²

III. DISCUSSION

8. We have before us two petitions for reconsideration of the *Report and Order*. Havens requests reconsideration with respect to whether licensees operating in areas with no navigable

¹⁴ See *Report and Order*, 22 FCC Rcd at 8977 ¶ 8.

¹⁵ See *id.*

¹⁶ See *id.* at 8984 ¶ 20. Part 22 of the Commission's Rules addresses the public mobile services, and Part 90 addresses the private land mobile radio services.

¹⁷ See *Report and Order*, 22 FCC Rcd at 8984-85 ¶¶ 20-21.

¹⁸ 47 C.F.R. § 80.123(d).

¹⁹ See *Report and Order*, 22 FCC Rcd at 8985 ¶ 22.

²⁰ See *id.* at 8985 ¶ 22-23.

²¹ See *id.* at 8978-79 ¶ 12. Havens contended that affording site-based licensees this flexibility would promote "squatting" on AMTS spectrum, conflict with the Commission's decision to freeze the licensing of site-based AMTS licensees, and generally be contrary to the Commission's auction policies and inequitable to geographic licensees.

²² See *id.*

waterways should be permitted to use Part 90 base station equipment, and whether the new operational flexibility accorded by the *Report and Order* should apply to site-based incumbent AMTS licensees.²³ NUSCO requests a clarification that the *Report and Order* “serves to finalize” the rule waiver granted to NUSCO to operate a private system serving units on land on AMTS spectrum.²⁴

9. *Havens Petition.* As noted above, the *Report and Order* denied Havens’s request that Section 80.123(d), which provides that “Radio equipment used on land must be certified for use under part 22, part 80, or part 90,”²⁵ be interpreted to permit licensees serving units on land to use Part 22 or Part 90 base station equipment.²⁶ The Commission clarified that Section 80.123(d) permits only AMTS and VPC land mobile units, but not base stations, to be approved under Part 22 or Part 90.²⁷ In the current petition, Havens does not address the language of the current rule, or the Commission’s intent when it adopted the rule, but instead argues for a change in Commission policy.²⁸ This conflicts with the language and intent of the current provision, and thus would require a rule change. Because the petition seeks not a reconsideration of the Commission’s rule interpretation, but amendment of the rule, the request is beyond the scope of the *Report and Order*, and therefore cannot be addressed in the context of a petition for reconsideration.²⁹

10. Havens also requests reconsideration of our decision to accord the new operational flexibility to incumbent site-based AMTS licensees as well as geographic AMTS licensees.³⁰ Havens it is unfair to afford site-based incumbents the same operational flexibility as geographic licensees, because geographic licensees have a more extensive coverage requirement.³¹ We are not persuaded by this

²³ See Havens Petition at 1-2.

²⁴ See NUSCO Petition at 3.

²⁵ 47 C.F.R. § 80.123(d).

²⁶ See *Report and Order*, 22 FCC Rcd at 8985 ¶ 22.

²⁷ The Commission explained that the rule was not intended to authorize the use on maritime frequencies of base station equipment that was not certified under Part 80, and affords flexibility only to use Part 22 or Part 90 land mobile radio units. See *id.* (“The Commission stated, ‘Land units must be type accepted under Part 80, 90, or 22 of our rules and must be limited to 25 watts transmitter output power.’ That the reference to ‘land units’ does not include base station equipment is evident from the reference in the immediately following sentence to ‘[m]obile units on land,’ which in context clearly refers to those same ‘land units,’ i.e., end-user equipment.”) (quoting *Second Report and Order*, 12 FCC Rcd at 16965 ¶ 26).

²⁸ Havens argues that licensees should be permitted to choose from wider selection of Part 90 base station equipment without having to incur the delay and expense of having the equipment also approved under Part 80. See Havens Petition at 1-2.

²⁹ See, e.g., Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order*, WT Docket No. 03-66, 21 FCC Rcd 5603, 5630 ¶ 42 (2006) (dismissing a petition for reconsideration as outside the scope of the rulemaking proceeding).

³⁰ See Havens Petition at 2. See also *Report and Order*, 22 FCC Rcd at 8978-79 ¶ 12.

³¹ See Havens Petition at 2. As noted in the *Report and Order*, when the Commission adopted a geographic licensing scheme for AMTS, it eliminated the requirement that site-based systems provide “continuity of service” along navigable waterways. See *Report and Order*, 22 FCC Rcd at 8978 n.53.

argument. As the *Report and Order* noted, the Commission has always afforded AMTS site-based licensees the same flexibility as site-based licensees, including the flexibility to serve units on land.³² Any imbalance that Havens perceives with respect to their construction and coverage requirements³³ is irrelevant to the issue of whether to treat site-based and geographic AMTS licensees consistently in terms of their operational requirements.

11. *NUSCO Petition.* In 2005, the Wireless Telecommunications Bureau's Public Safety and Critical Infrastructure Division granted NUSCO a waiver of Sections 20.9, 80.5, 80.123, and 80.475 of the Commission's Rules to permit it to use AMTS spectrum for PLMR operations in support of its utility services,³⁴ conditioned on the outcome of this proceeding.³⁵ NUSCO now seeks clarification that the *Report and Order* did not affect its operating privileges under this waiver.³⁶ In the alternative, NUSCO seeks reconsideration of the *Report and Order* to the extent necessary to finalize the waiver with no further action required by NUSCO.³⁷

12. We clarify that operations commenced pursuant to the waiver that conform with the rules adopted in the *Report and Order* may continue with no additional authorization; to the extent, however, that the operations of NUSCO (or other entities operating pursuant to similarly conditioned waivers) conflict with the rules adopted in the *Report and Order*, those operations may not continue until they are brought into compliance. If any such waiver recipient believes that it cannot comply with any requirement of the rules, it must request a separate waiver, as discussed in the *Report and Order*.³⁸

13. *Administrative matters.* In the *Report and Order*, the Commission amended Sections 80.5 and 80.475(d) to eliminate the words "interconnected" and "integrated" from the definition of

³² See *Report and Order*, 22 FCC Rcd at 8979 ¶ 12 (citing Amendment of the Commission's Rules Concerning Maritime Communications, *Second Memorandum Opinion and Order and Fifth Report and Order*, PR Docket No. 92-257, 17 FCC Rcd 6685, 6709 ¶ 53 (2002) (permitting incumbents to partition and disaggregate on the same terms as geographic licensees)).

³³ But see 47 C.F.R. § 80.49(a)(3) (affording a ten-year construction period for AMTS geographic licensees, but two years for site-based licensees).

³⁴ See AMTS Consortium, LLC, 20 FCC Rcd 17975 (WTB PSCID 2005) (*NUSCO Waiver*), *aff'd*, 22 FCC Rcd 1597, 17979 ¶ 10 (WTB MD 2007), *aff'd*, FCC 10-5 (adopted Jan. 6, 2010). Similar waivers also were expressly conditioned on the outcome of this proceeding. See Motorola, Inc., 22 FCC Rcd 579, 585 ¶ 13 (WTB MD 2007); PacifiCorp and MariTEL Southern Pacific, Inc. and MariTEL Northern Pacific, Inc., *Order*, 21 FCC Rcd 7762, 7767 ¶ 13 (WTB PSCID 2006), *review pending*.

³⁵ See *NUSCO Waiver*, 20 FCC Rcd at 17979 ¶¶ 10, 13.

³⁶ See *NUSCO Petition* at 2-3.

³⁷ See *id.* at 3.

³⁸ In the *Report and Order*, the Commission noted that the Part 80 rules can be waived if licensees demonstrate, on a case-by-case basis, that such relief is warranted. See *Report and Order*, 22 FCC Rcd at 8985 ¶ 21. In order to reduce potential administrative burdens, delay and uncertainty, the Commission provided guidance for prospective waiver applicants, explaining that the assessment of a waiver application will include a consideration of whether and how the maritime communications will continue to receive priority; the distance of a proposed land mobile station from the nearest navigable waterway; the magnitude of the divergence from the Part 80 technical requirements; the availability of alternative spectrum; and the possibility of a resultant benefit to public safety or homeland security. See *id.* at 8986-87 ¶ 26.

AMTS.³⁹ The Commission, however, omitted to amend the definition of AMTS in Section 80.385(a)(1).⁴⁰ We therefore amend Section 80.385(a)(1) in accordance with the changes to Sections 80.5 and 80.475(d).⁴¹

IV. PROCEDURAL MATTERS

A. Paperwork Reduction Act

14. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

B. Further Information

15. For further information, contact Stana Kimball, Mobility Division, Wireless Telecommunications Bureau, (202) 418-1306, or TTY (202) 418-7233, or via electronic mail at stanislava.kimball@fcc.gov.

16. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty). This *Memorandum Opinion and Order* can also be downloaded at: <http://www.fcc.gov/>.

V. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED, pursuant to the authority of Sections 4(i), 4(j), 7(a), 302, 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), and 332(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 157(a), 302, 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), and 332(c), that Part 80 of the Commission's Rules IS AMENDED as set forth in the attached Appendix A, effective thirty days after publication in the Federal Register.

18. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, the Petition for Clarification or Partial Reconsideration filed by Northeast Utilities Service Company on June 13, 2007 IS GRANTED IN PART to the extent discussed above.

19. IT IS FURTHER ORDERED that, the Petition for Reconsideration filed by AMTS Consortium LLC, Telesaurus VPC, LLC, Intelligent Transportation & Monitoring Wireless LLC, and Warren Havens on July 6, 2007 IS DENIED.

20. IT IS FURTHER ORDERED that the Motion to Dismiss or to Strike filed by Paging Systems, Inc. on September 13, 2007 IS DENIED.

³⁹ *See id.* at 8978 n.53.

⁴⁰ 47 C.F.R. § 80.385(a)(1).

⁴¹ As this is only a conforming amendment, we find for good cause that compliance with the general notice and comment provisions of the Administrative Procedure Act is unnecessary. *See* 5 U.S.C. § 553(b)(B).

21. IT IS FURTHER ORDERED that the proceeding WT Docket No. 04-257 IS HEREBY TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Marlene H. Dortch". The signature is fluid and cursive, with the first name "Marlene" being more prominent than the last name "Dortch".

Marlene H. Dortch
Secretary

APPENDIX**Final Rules**

Chapter I of Title 47 of the Code of Federal Regulations, Part 80 is proposed to be amended as follows:

Part 80 – Stations in the Maritime Services

1. The authority citation for Part 80 continues to read as follows:

AUTHORITY: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.385 is amended by revising paragraph (a)(1) to read as follows:

§ 80.385 Frequencies for automated systems.

* * * * *

(a)(1) The Automatic Maritime Communications System (AMTS) is an automatic maritime telecommunications system.

* * * * *